



# 21ST TSC LEGAL INFORMER



SUMMER 2021

## Trial Defense Service

By Captain Alex Brink

The US Army Trial Defense Service (TDS) provides legal advice and representation to Soldiers facing disciplinary and adverse action. TDS defends those who defend America. TDS does not work for your command; they are here to defend you and to ensure you understand your rights. The Western Germany TDS team provides confidential legal advice to individual Soldiers. If you are pending any of the following adverse actions or criminal investigations, you may be eligible for our services:



1) Courts-martial. You have the right to be represented by a military attorney at no cost to you if you are subject to trial by court-martial.

2) Article 15s. If your command notifies you that you are pending non-judicial punishment under Article 15 of the Uniform Code of Military Justice, a TDS attorney will explain your rights before your second reading (hearing).

3) Involuntary separation (enlisted Soldiers and officers). If you are being separated for misconduct, TDS attorneys can explain the separation process, advocate on your behalf, and may represent you in a separation board or board of inquiry.

4) Suspect Rights. If your command or law enforcement suspects you of a crime they are required to read you your rights. Do not talk! Ask for a lawyer! Contact TDS! TDS attorneys can provide you a suspect rights consultation before you answer questions from any command or law enforcement investigators.

Contacting TDS. Western Germany TDS offices have moved to virtual consultations in response to the COVID-19 pandemic. If you would like to speak to an attorney on any of the above subjects, please send an e-mail to the following group address:

[usarmy.rheinland-pfalz.21-tsc.list.western-germany-tds@mail.mil](mailto:usarmy.rheinland-pfalz.21-tsc.list.western-germany-tds@mail.mil)

Do not copy anyone on your e-mails to our office. Please understand we may not respond immediately. Our offices represent Soldiers across Europe and Asia and our attorneys are often in trial representing other Soldiers. We will respond to your e-mail as soon as possible.

### IN THIS ISSUE:

- Trial Defense Service
- NATO SOFA and German Income Taxation
- Claims Advice Before Your Move: Understanding Your Inventory

The 21st TSC Legal Informer is the newsletter of the 21st Theater Sustainment Command (TSC) Office of the Staff Judge Advocate.

Our mission is to provide outstanding legal support to Soldiers, Civilian Employees and Family Members assigned to or supported by the 21st TSC. Our headquarters is located in Kaiserslautern, Germany. We have branch offices in Baumholder and Stuttgart, Germany, Mons, Belgium, Schinnen, the Netherlands and Camp Bondsteel, Kosovo.

Copies of this and previous newsletters may be found at: <https://intra-net.eur.army.mil/21tsc/sja/SitePages/Home.aspx>

## NATO SOFA and German Income Taxation

Can Germany tax your military pay just because you are assigned in the country? Reports of German tax authorities increasingly attempting to tax military pay have caused concern in the Kaiserslautern military community, so what are the rules? US Forces personnel (service members, DoD civilians and DoD contractors) who find themselves stationed in Germany continue to be taxed by the US (and their home state), but are exempted from German income taxation with respect to their government salary under the NATO Status of Forces Agreement (SOFA) and the German Supplementary Agreement (SA) to it. Despite of the aforementioned, German tax authorities have sought to tax DoD personnel with SOFA status when they find individual circumstances indicating other reasons for a member's presence in Germany than the employment with the US Forces. When this is the situation, authorities argue the individual is no longer present "solely" because they are a member of the US Forces or civilian component, but have ties to Germany supposedly indicating no intent to return to the United States.

The following non-exclusive list are factors which German tax authorities may use to determine an individual's lack of intent to return to the United States with the consequence of putting the individual's military pay at a high risk of becoming subject to German taxation:

- (1) Marrying a German spouse, especially, but not only, if that spouse works and files taxes in Germany, never accompanies the individual on assignments, and/or does not have a US Permanent Residence Card (i.e. "Green Card");
- (2) A lengthy overall stay in Germany (German tax authorities are aware of the "5-year rule" applicable to most DoD civilian employees);
- (3) Owning real estate in Germany (and lack of real estate ownership in the US);
- (4) Registering with the German local residency office (Einwohnermeldeamt), which automatically triggers a German tax ID number;
- (5) Enrolling children in German Kindergarten or school to include International schools off base;
- (6) Failing to maintain a valid US state driver's license;
- (7) Failing to file US state income tax returns regularly;
- (8) Making infrequent trips to the US; or
- (9) Failing to apply for positions outside Germany. Actually returning to the US for a job assignment may not be sufficient proof of intent to return to the US if the job was accepted after German tax authorities began an income tax inquiry.

Filing a joint German tax return with a German spouse or spouse working on the German economy (Zusammenveranlagung) is an affirmative request by an individual to be taxed like a German resident rather than a member of the US Forces or civilian component exempted under the NATO SOFA. If the SOFA tax exemption no longer applies, world-wide income (to include the recoupment of ILS privileges) will be taxed IAW with the then applicable US-German Double Tax Treaty rules. Although these rules ensure that income will be taxed only once, under some scenarios income will be fully taxed by Germany and not the US.

Taxation determinations are made on a case-by-case basis, weighing the specific circumstances of each individual. Positive ties to the US may outweigh the above factors. However, the (heavy) burden of proof for an existing "intent to return" is on the individual concerned, not the German tax authorities, and has to be ready to be demonstrated as maintained in every tax (calendar) year in case of a review. Orders showing temporary assignment to Germany alone are insufficient!

If you think you might be at risk, if you have further questions or if you received a letter from the German tax authorities inquiring about your status and income, you may contact your legal assistance office and schedule a time to speak with an attorney before taking any further steps. The US Forces have lodged an official complaint with the Federal German government about this taxation practice and negotiations are pending.



# Claims Advice Before Your Move: Understanding Your Inventory

By Noel van Zandvoort

As you prepare for your next Government-sponsored move, there are certain things you should know which will assist you in filing a claim if your property is lost or damaged. Generally, the inventory is your most important document in establishing a loss of household goods or hold baggage. Normally, a thorough, well-prepared inventory listing the contents of boxes in detail adequately substantiates your ownership.

Please pay attention to your inventory your carrier prepares. It lists your personal property and you will be required to sign it before the driver leaves. The inventory should be legible and should accurately list your household goods, particularly high value items.

Ensure each carton and loose item (ladder, rake, etc.) has an inventory tag and is listed on the inventory. Ensure the content of cartons accurately identifies the property; e.g., if a box contains crystal make sure the inventory says "crystal" not "kitchen items." Identify contents left in drawers. Be sure the inventory reflects the contents.



Do not ship your proof of ownership documents, such as purchase receipts, prior appraisals, and pictures of your personal property, with your household goods. Hand-carry these important documents, or email/store these to a cloud data service. Consider shipping valuable items via insured postal service, or carry them with you if you can safely do so.

You should strongly consider videotaping/photographing your property. If items are extremely valuable, (e.g., jewelry, comic books, baseball cards) you should obtain an appraisal before moving and/or consider having a separate insurance (transport) that will cover the shipment. You will have to prove ownership and value in the event of a claim, and that can be difficult for items that are valued based on their collectability, rarity, or artistic content. For example, if you own a particular comic book or baseball card which is in mint condition, you should consider some type of professional appraisal to substantiate ownership and value. It may be difficult to prove value after it is lost if you do not have the appraisal. An appraisal made after the item is missing based on a verbal description may carry less weight for adjudication of a claim.

Identify audio/video equipment by make, model number and serial number. Compact disks (CDs) & DVDs, should be counted and the number entered on the inventory.

Separate your professional items and authorized consumables. Be sure they are identified on the inventory as professional books, papers and equipment or authorized consumables as the items are weighed separately.

Monitor the wrapping and packing of your items; ensure everything is wrapped individually and adequately. Make sure heavy items are not packed on top of lighter items. Don't allow your property to be taken to the warehouse to be packed without first consulting the transportation office.

## Claims Advice Before You Move: Understanding Your Inventory (continued)

For furniture, the condition of the property is usually reflected by codes; these codes are called "exception symbols" and "location symbols." There is an explanation for these symbols at the top of each inventory page. Check the string of symbols listed for each item closely. This is how the packers show pre-existing damage. For example, "BR 2-4-5-3" means "broken, bottom front left corner." A good inventory shows what condition the item was in at the time of pickup.

If your inventory is inaccurate, tell the carrier's representative and write down why you disagree at the bottom of the inventory in the



space marked for "Exceptions." Identify the inventory line number and the item you are commenting on. Be specific as to why you disagree. Carefully read the inventory prepared by the carrier's personnel before you sign. Look at it from time to time while the items are being packed.

Do not sign anything until you have read, understood and agree with it. The carrier must provide you a legible copy of everything you sign. Never sign a blank, incomplete or illegible form or a form you cannot clearly understand.

Do not argue with the carrier's representative. If you have a problem, call your transportation office at once. By signing the inventory at the end of the pack out, without taking exceptions, you acknowledge that the inventory is an accurate and complete reflection of your shipment and its conditions. Remember, you the shipper, are the person best suited to know what you shipped and the condition of the listed items. If these items are subsequently damaged it could affect your claims award.

For questions or assistance call your local military claims office.

## 21st TSC Legal Offices

### Kaiserslautern

#### Kleber Kaserne, Bldg. 3210

Legal Assistance: DSN 483-8848/6782

Tax Assistance: DSN 483-8848

Claims: DSN 483-8968

International Law: DSN 483-8854/8859

Trial Defense Service: DSN 483-8397

(Civilian: +49-631-411-XXXX)

#### Panzer Kaserne, Bldg. 3004

Administrative Law: DSN 523-0470

Criminal Law: DSN 523-0488

Special Victim Team: 523-0526

(Civilian: +49-0611-143-523-XXXX)

### Baumholder Law Center

#### Smith Barracks, Bldg. 8680

Legal Assistance: DSN 531-2445

(Civilian: +49-611-143-531-XXXX)

### Stuttgart Law Center

#### Kelley Barracks, Bldg. 3312

Legal Assistance: DSN 421-4152

(Civilian: +49-711-729-4152)

### Northern Law Center

#### SHAPE (Mons, Belgium), Bldg. 318

Legal Assistance: DSN 423-4910 or 4868

(Civilian: +32-65-44-4910 or 4868)

### Netherlands Law Center

#### USAG Benelux-Brunssum, Bldg 8

Legal Assistance: DSN 597-4182

(Civilian: +31-45-534-0182)

### Kosovo Law Center

#### Camp Bondsteel, Bldg 1330C

Legal Assistance: DSN 781-4575

(Civilian: +383-49-774-628)





## Members of Legal Team Honored



In April a number of OSJA civilian employees were honored by the 21st TSC Commanding General, MG Christopher Mohan, for the length of their service. Those honored (pictured top left to bottom right) were Monique Berthon (35 years), Karl Sawallisch (35 years), Robert Vedra (25 years), Marianne Schoonjans (20 years), Holger Blug (15 years), and Marcin Krupa (5 years). The ceremony was held virtually and can be viewed on the 21st TSC Facebook page at <https://www.facebook.com/21stTSC>

### KAISERSLAUTERN LEGAL ASSISTANCE OFFICE

**Directions to Kleber Kaserne:** From Vogelweh, Ramstein, or Landstuhl take the Autobahn A6 in the direction of Mannheim. On your right you will see a large store called Möbel Martin. Make sure you are in the right lane as you take the Kaiserslautern Ost Ausfahrt (exit). Turn right as you leave the exit ramp and drive downhill until you reach a stop light. Proceed straight ahead at the intersection and follow the priority road as it curves to the right behind the Real store. Enter Kleber Kaserne by the east gate. Turn right after passing the clinic. Drive north until you reach an intersection with 4 stop signs. Bldg. 3210 sits to the left of that intersection. Parking on Kleber Kaserne is difficult—allow a few extra minutes to circulate until you find an open spot. Enter Bldg. 3210 from the door on the east end of the building.

